



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193

(703) 583-3800 Fax (703) 583-3821

www.deq.virginia.gov

Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Thomas A. Faha
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
LCVA HOLDINGS LLC
FOR
CHANTILLY PLACE SEWAGE TREATMENT PLANT
VPDES Permit No. VAG40
Registration Number VAG406575**

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SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and LCVA Holdings LLC, regarding the Chantilly Place Sewage Treatment Plant, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
6. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
7. "DMR" means Discharge Monitoring Report.
8. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
9. "Facility" or "Plant" means the Chantilly Place Sewage Treatment Plant located at 43112 John Mosby Highway in Chantilly, Virginia, which treats and discharges treated sewage, for a retail space.
10. "LCVA" means LCVA Holdings LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. LCVA is a "person" within the meaning of Va. Code § 62.1-44.3.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
13. "O&M" means operations and maintenance.
14. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
15. "Permit" means VPDES General Permit No. VAG40, the General Permit for Domestic Sewage Discharges of Less than or Equal to 1,000 Gallons Per Day, which was issued under the State Water Control Law and the Regulation on August 2, 2011 and which

expires on August 1, 2016. LCVA applied for registration under the Permit and was issued Registration Number VAG406575 on August 7, 2015.

16. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water...
9 VAC 25-31-10.
17. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
18. "Regulation" means the VPDES General Permit Regulation for Domestic Sewage Discharges of Less than or Equal to 1,000 Gallons Per Day, 9 VAC 25-110-10 *et seq.*
19. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
20. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.
Va. Code § 62.1-44.3.
21. "Va. Code" means the Code of Virginia (1950), as amended.
22. "VAC" means the Virginia Administrative Code.
23. "VPDES" means Virginia Pollutant Discharge Elimination System.
24. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. LCVA owns the Plant. The Permit allows LCVA to discharge treated sewage from the Plant to a side ditch which discharges to an unnamed tributary of Elklick Run, in strict compliance with the terms and conditions of the Permit.
2. The receiving stream has not been assessed. Elklick Run is impaired for benthic macroinvertebrates for aquatic life use, and impaired for bacteria for recreational use approximately 3.8 miles downstream from the location of the discharge.
3. DEQ staff conducted a site visit of the Facility on June 24, 2015, based on information provided by the Facility operator. During the site visit, DEQ staff noted standing water with a strong sewage odor around the treatment unit, indicating that the unit had overflowed. In addition, after a file review, DEQ staff noted that LCVA did not appear to currently have coverage under the General Permit.
4. Based on the observations noted during the June 24, 2015, site visit, DEQ issued WL No. W2015-07-N-103 to LCVA on July 24, 2015, for discharging without a permit.
5. LCVA applied for registration under the Permit and was issued Registration Number VAG406575 on August 7, 2015.
6. DEQ staff conducted an inspection of the Facility on August 20, 2015. During the inspection DEQ staff observed sewage overflowing from the treatment unit onto the ground.
7. Based on the observations noted during the August 20, 2015, inspection, DEQ issued WL No. W2015-08-N-1041 to LCVA on September 4, 2015.
8. DEQ staff conducted a follow-up inspection of the Facility on September 11, 2015. During the inspection, DEQ staff observed sewage had overflowed from the treatment unit onto the ground.
9. Based on the observations noted during the September 11, 2015, follow-up inspection, DEQ issued WL No. W2015-09-N-1028 to LCVA on September 29, 2015.
10. DEQ staff conducted an inspection of the Facility on October 14, 2015. During the inspection, DEQ staff observed a gray discharge with a strong sewage odor at the outfall. During the inspection, the owner noted that he had increased the pump out frequency of the tanks, was pursuing the installation of an additional grease trap, and had educated the tenants on proper grease management. During the inspection, DEQ staff requested that water samples be taken for Total Suspended Solids (TSS), Biochemical Oxygen Demand (BOD₅), and *E.coli*, and that the results be submitted to DEQ. Sample results were

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders LCVA, and LCVA agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$3,375.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

LCVA shall include its Federal Employer Identification Number (FEIN) with the civil charge payment **and** shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, LCVA shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of LCVA for good cause shown by LCVA, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, LCVA admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

including appropriate quality assurance procedures. The provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

21. Part I.B.2.b.1 of the Permit states that for existing treatment works serving non single family dwellings, the permittee shall keep a maintenance contract in force during the permit term, unless an exception to the maintenance contract requirement has been requested and granted in accordance with Part I.B.3. A copy of the maintenance contract, if applicable, shall be kept at the site of the treatment works and made available to DEQ for examination upon request. DEQ did not grant an exception to the maintenance contract requirement.
22. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.”
23. Part I.A.1 of the Permit contains permit effluent limitations.
24. The VPDES Permit Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
25. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
26. The Department has issued no permits or certificates to LCVA other than VPDES Permit No. VAG40.
27. The drainage ditch which is an unnamed tributary to Ellick Run is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
28. Based on the results of the June 24, 2015, August 20, 2015, September 11, 2015, October 14, 2015, January 4, 2016, February 2, 2016, February 5, 2016, and March 18, 2016 and April 29, 2016 inspections, the May 9, 2016 meeting, the sampling results submitted to DEQ on November 6, 2015, and documentation submitted to DEQ by LCVA's previous contractor, the Board concludes that LCVA has violated Part I.A.1, Part I.B.2.b.1, and Part II.Q of the Permit, 9 VAC 25-31-50, and §62.1-44.5 by discharging treated sewage from the Plant initially without coverage under the Permit and subsequently while concurrently failing to comply with the conditions of the Permit, as described in paragraph C(3) through C(26) above.
29. In order for LCVA to return to compliance, DEQ staff and representatives of LCVA have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

submitted to DEQ on November 6, 2015, and noted permit limit exceedances of the instantaneous maximum limit for TSS, BOD₅, and the yearly concentration maximum limit for *E.coli*.

11. Based on the observations noted during the October 14, 2015 inspection, and the sample results received by DEQ on November 6, 2015, DEQ issued WL No. W2015-11-N-1005 to LCVA on November 10, 2015.
12. DEQ staff conducted a follow-up inspection of the Facility on January 4, 2016, and observed standing water around the treatment unit that appeared gray and had a strong sewage odor. Additional inspections were conducted at the Facility on February 2, and February 5, 2016, and DEQ staff observed standing water around the treatment unit that appeared gray and had a strong sewage odor.
13. Based on the observations noted during the February 2 and 5, 2016 inspections, DEQ issued NOV No. W2016-02-N-0006 to LCVA on February 19, 2016.
14. On March 8, 2016, DEQ was notified by WasteMaster, LLC, LCVA's operations and maintenance contractor for the treatment system, that the contract for operation and maintenance of LCVA's system was terminated due to the owner's ongoing lack of action in response to WasteMater's recommendations for maintaining the treatment system properly.
15. DEQ staff conducted an inspection of the Facility on March 18, 2016. During the inspection DEQ staff observed gray sewage sludge and grease around the treatment unit and smelled a strong sewage odor. The unit was actively overflowing during the inspection.
16. DEQ staff conducted an inspection of the Facility on April 29, 2016. DEQ staff observed that the area surrounding the tank was wet with white foam coming out of the treatment unit.
17. Based on the observations noted during the March 18, 2016, inspection, DEQ issued NOV No. W2016-04-N-0017 to LCVA on April 21, 2016.
18. On May 9, 2016, Department staff met with representatives of LCVA and LCVA's tenant to discuss the violations.
19. LCVA's operating logs indicate that it discharged treated wastewater from the Plant every day from June 24, 2015, through the present.
20. Part II.Q of the Permit states that the permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls,

4. LCVA consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. LCVA declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by LCVA to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. LCVA shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. LCVA shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. LCVA shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and LCVA. Nevertheless, LCVA agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after LCVA has completed all of the requirements of the Order;
- b. LCVA petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to LCVA.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve LCVA from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by LCVA and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of LCVA certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind LCVA to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of LCVA.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, LCVA voluntarily agrees to the issuance of this Order.

Consent Order

LCVA Holdings LLC; VPDES Permit No.-VAG40 Registration Number VAG406575

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And it is so ORDERED this 7th day of November, 2016.



Thomas A. Faha, Northern Regional Director
Department of Environmental Quality

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Consent Order

LCVA Holdings LLC; VPDES Permit No.-VAG40 Registration Number VAG406575

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LCVA Holdings LLC voluntarily agrees to the issuance of this Order.

Date: 2/30/16 By: James Kontomay, MEMBER
(Person) (Title)
[LCVA Holdings LLC]

Commonwealth of Virginia

City/County of Prince William

The foregoing document was signed and acknowledged before me this 30th day of August, 20 16 by James Kontomay who is a member of LCVA Holdings LLC, on behalf of the company.

[Signature]
Notary Public

7525296
Registration No.

My commission expires: April 30, 2020

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

LCVA Holdings LLC shall:

1. Submit a plan and schedule to DEQ for review within 30 days of execution of the Order that details what steps LCVA Holdings LLC shall take to stop overflows from the Facility. Upon DEQ approval, said plan and schedule shall become an enforceable under this Order.
2. Obtain an operation and maintenance contract for the Facility and provide a copy of said contract to DEQ by August 15, 2016.

DEQ Contact

Unless otherwise specified in this Order, LCVA Holdings, LLC shall submit all requirements of Appendix A of this Order to:

Virginia Department of Environmental Quality
Northern Regional Office
Attn: Enforcement
13901 Crown Court
Woodbridge, VA 22193